

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF PUERTO RICO

3  
4 JAIME ALICEA-ACEVEDO, et al.,

5 Plaintiffs

6 v.

7 LUIS RIVERO-CUBANO, et al.,

8 Defendants

CIVIL 05-1701 (FAB) (JA)

9  
10 OPINION AND ORDER

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12 This matter is before the court on a motion for reconsideration filed by  
13 defendants, Luis Rivero-Cubano; in his official capacity, Rafael Billoch, Francisco  
14 González, Edmundo González, William Acevedo-Rivera, César Olivera-Linares,  
15 Eliezer Ramos-González, Segundo Soto-Cruz, Idalia Albery-Beltrán, Roberto Soto,  
16 Antolín González, Alberto Nolasco, Nereida Bonet, Nereida Portalatín, and Carmen  
17 Centerno-Rivera; in their personal capacities (collectively "defendants"). (Docket  
18 No. 79, November 13, 2007.) Defendants contend this court erred in granting  
19 summary judgment to plaintiffs in an Opinion and Order dated October 31, 2007.  
20 (Id.) In that Opinion and Order, plaintiffs were granted summary judgment  
21 because defendants, through their failure to reply to plaintiffs' requests for  
22 admissions, were held to have admitted all the facts necessary to satisfy plaintiffs'  
23 claims of adverse employment actions based on political discrimination. (See  
24 Docket No. 78.)

25 Defendants set out three arguments in support of their motion: First,  
26 defendants argue five of the seventeen plaintiffs' claims of adverse employment  
27 actions against five of the sixteen defendants are supported by the admissions  
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3 made by the defendants. (Docket No. 79, at 4-5.) The rest of the admissions,  
4 allege the defendants, concern claims for hostile work environment based on  
5 political discrimination. (Id. at 5.) Second, defendants allege summary judgment  
6 was improper because it was based solely on plaintiffs' prima facie case, and  
7 defendants were not afforded an opportunity to establish their nondiscriminatory  
8 reasons for the challenged job actions. (Id. at 6.) Third, defendants allege that  
9 none of them had the authority to grant plaintiffs the promotions and salary raises  
10 the plaintiffs sought, and so there was no causal relationship between the  
11 defendants and the deprivation of plaintiffs' federal rights. (Id. at 4, 6.) Along  
12 with these arguments defendants submit a "clarification," alleging that plaintiff's  
13 requests for admissions were not filed before this court. (Id. at 4.)

14 Additionally, defendants allege that Luis Rivero-Cubano was never served  
15 with process and therefore this court has no personal jurisdiction over him in this  
16 matter; there are no allegations against him in the plaintiffs' complaint; and there  
17 are no admissions deemed admitted by default as to defendant Rivero. (Id. at 6.)

18 Finally, defendants note that plaintiffs brought an action for adverse  
19 employment actions based on political discrimination and were never terminated,  
20 as this court inadvertently stated in its last opinion. (Id. at 5; Docket No. 78, at  
21 9-10.)

22 On November 26, 2007, plaintiffs filed a response in opposition to  
23 defendants' motion for reconsideration. (Docket No. 80.) Plaintiffs noted that  
24 each of them specifically alleged which defendant had subjected each plaintiff to  
25 adverse employment actions, political harassment, and hostile working  
26 environment resulting therefrom. (Id. at 2.) Plaintiffs also noted that these  
27 allegations have been deemed admitted against each of the relevant defendants.  
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3 (Id. at 3.) Plaintiffs only agreed with defendants that the clerical errors made by  
4 this court, the words "terminated" and "discharged," should be corrected to read  
5 "adverse employment actions."

6 Having considered the arguments of the parties and for the reasons set  
7 forth below, defendants' motion for reconsideration is GRANTED in part and  
8 DENIED in part.

9 I. FACTUAL AND PROCEDURAL BACKGROUND

10 On June 27, 2005, plaintiffs filed a complaint under 42 U.S.C. § 1983,  
11 alleging that defendants discriminated against them because of plaintiffs' political  
12 beliefs as members of the New Progressive Party (hereinafter "NPP"). (Docket No.  
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14 1.) Plaintiffs alleged in their complaint "[d]efendants have retained new  
15 employees to perform many of the duties that were previously performed by the  
16 plaintiffs and/or have assigned those duties to employees identified with the  
17 Popular Democratic Party." (Id. at 5, ¶ 26.) Luis Rivero-Cubano was specifically  
18 named as one of the defendants against which plaintiffs sought relief: "LUIS  
19 RIVERO CUBANO, Secretary of the Department of Agriculture, and as such is the  
20 nominating authority to which if the injunctive relief requested is granted should  
21 be directed." (Id. ¶ 28.)

22 In the first cause of action in the complaint, every single plaintiff made the  
23 same allegation, (1) that they did not receive a raise in salary, promotion, or  
24 fringe benefit similarly granted to employees identified with the Popular  
25 Democratic Party (hereinafter "PDP"); (2) that the majority of the responsibilities  
26 associated with plaintiff's position were taken away by one of the defendants; (3)  
27 that the plaintiff performed his duties efficiently and there had been no complaint  
28 of his performance; and (4) that the only reason for not receiving the raise in

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3 salary or promotion the plaintiff was due was because of his affiliation with the  
4 NPP. (Docket No. 1, at 9-13.) In each of those allegations each plaintiff's name  
5 and position, along with the defendant who took away the plaintiff's position,  
6 could simply be replaced with the next plaintiff, position and relevant defendant.  
7 (See Id.)

8 In the second cause of action in the complaint, every plaintiff alleged they  
9 were subjected to political harassment by one of the defendants. (Id. at 14-20.)  
10 Again, each of the allegations by the different plaintiffs read almost exactly alike:  
11 (1) a specific defendant subjected the plaintiff to political remarks; (2) these  
12 remarks were on an almost daily basis; (3) these remarks continue today; and (4)  
13 these remarks provoke a hostile work environment solely on the basis of plaintiff's  
14 membership to the NPP. (Id.)

15 On June 27, 2005, summons were issued against the defendants; Luis  
16 Rivero-Cubano was among the defendants against whom a summons was issued.  
17 (Docket No. 2.) On July 28, 2005, proof of service was filed by the plaintiffs as  
18 to defendants Rafael Billoch, Eliezer Ramos-González, Segundo Soto-Cruz, Idalia  
19 Alberty-Beltrán, Nereida Bonet, Francisco González, Edmundo González, William  
20 Acevedo-Rivera, César Olivera-Linares, Alberto Nolasco, and Nereida Portalatín.  
21 (Docket Nos. 7 & 8.) On August 17, 2005, proof of service was filed by plaintiffs  
22 as to defendants Roberto Soto and Antolín González. (Docket No. 13.) On  
23 September 22, 2005, proof of service was filed by plaintiffs as to defendants  
24 Carmen Centerno-Rivera. (Docket No. 15.)

25 On September 22, 2005, all the defendants against whom proof of service  
26 of process had been filed thus far filed their answer to plaintiffs' complaint and  
27 were individually named in the first paragraph of their answer. (Docket No. 16.)  
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3 Defendants were represented in the caption to the answer as "LUIS RIVERO-  
4 CUBANO, et al." (See Id.) One of the affirmative defenses set forth by these  
5 defendants was that "[t]here is no causal relationship between any action or  
6 omission by the Defendants and the damages claimed in the Complaint." (Id. at  
7 4.)

8 On February 3, 2006, defendants, this time not individually named but  
9 simply represented as "defendants," filed a motion to request that the March 9,  
10 2006, initial scheduling conference be held in the afternoon. (Docket No. 21.)  
11 Again, the defendants were represented in the caption to this motion as "LUIS  
12 RIVERO-CUBANO, et al." (See Id.)

13 On February 16, 2006, Luis Rivero-Cubano filed a motion to join the answer  
14 to the complaint. (Docket No. 28.)

15 On December 4, 2006, plaintiffs sent defendants requests for admissions  
16 pursuant to Federal Rule of Civil Procedure 36. (Docket Nos. 70-4, 70-5, 70-6,  
17 70-7.) These requests for admissions went unanswered and on June 4, 2007,  
18 plaintiffs filed a motion to compel defendants to comply with the requested  
19 discovery. (Docket No. 56.) That motion was granted and defendants were  
20 deemed to have admitted the allegations in the unanswered requests for  
21 admissions. (Docket No. 60.)

22 On October 3, 2007, the plaintiffs filed a motion for summary judgment with  
23 a memorandum of law and uncontested facts. (Docket No. 70.) Along with their  
24 motion for summary judgment, plaintiffs filed the unanswered requests for  
25 admissions made of the defendants. (See Docket Nos. 70-4, at 1-2, 6-7, 10-11,  
26 14-19, 23-25; 70-5, at 1-2, 6-7, 10-12, 16-19, 23-24; 70-6, at 1-3, 4-7, 11-14,  
27 18-19, 21-24; 70-7, at 1-3, 4-5, 6-7, 11-12, 13-14, 22-24.)

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3        Each defendant was deemed to have admitted that (1) they are employees  
4 at the Department of Agriculture Service and Development of Farming  
5 Administration (hereinafter "ASDA") and PDP members; (2) defendant harassed  
6 at least one of the plaintiffs for political reasons; (3) the plaintiff the defendant  
7 harassed is an employee of the ASDA; and (4) the defendant knew plaintiff was an  
8 NPP member. (See Id.)

9        Roberto Soto was deemed to have admitted that (1) he told Jaime Alicea-  
10 Acevedo ("Alicea") that Roberto Soto would "personally see to it [Alicea was]  
11 forced to resign"; (2) he told Alicea that if he "continued his activities for the NPP  
12 [Alicea] would have to resign or he would be dismissed. . ."; and (3) after the  
13 2004 elections Roberto Soto told Alicea that his days at the ASDA were numbered.  
14 (Docket No. 70-4, at 2, ¶¶ 6, 7, 8.)

15       Segundo Soto was deemed to have admitted he told Juan Avilés-Acevedo  
16 that (1) Segundo Soto knew Avilés went to a lawyer and knew Avilés was the  
17 cousin of the mayor of the city of Moca, an NPP affiliate; (2) Avilés' loyalty to the  
18 NPP would never get Avilés transferred to the Moca office, a position Avilés  
19 desired; and (3) Avilés, his cousin, and Rosselló, a previous governor of Puerto  
20 Rico affiliated with the NPP, were a disgrace to Puerto Rico. (Id. at 7.)

21       Segundo Soto was deemed to have admitted he told Raúl Cardona-Salcedo  
22 ("Cardona") that (1) it would be in Cardona's best interest to resign or Segundo  
23 Soto would make it hell for Cardona because of his political affiliation; (2)  
24 Segundo Soto had instructions to see that members of the NPP either resign or  
25 be dismissed; and (3) Cardona should work for Rosselló because only those loyal  
26 to the PDP should work at the ASDA. (Id. at 11.)

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Edmundo González and William Acevedo-Rivera ("Acevedo") were deemed to have admitted they told Migdalia Cordero-Ramos ("Cordero") that (1) all NPP members are corrupt; (2) all NPP members should be in jail; (3) Cordero is just as corrupt as Rosselló; and (4) "[w]e know that you are an active member of the NPP and as such we consider you a corrupt employee.' (Id. at 15, 17.)

César Olivera-Linares ("Olivera") was deemed to have admitted he told Cordero that (1) it would be in Cordero's best interest to resign or they would make her working conditions hell; and (2) Cordero "will go crazy and that not even Rosselló will be able to help her." (Id. at 19.)

César Olivera-Linares was also deemed to have admitted he told Jesús A. Cuevas-Pérez ("Cuevas") that (1) Olivera had specific instructions from the director of the ASDA to transfer Cuevas; (2) Cuevas was prohibited from using a phone, desk, chair, secretary or office; (3) Cuevas had to understand that PDP members were the only ones that could work for the ASDA; (4) Cuevas had to understand that "[w]e don't trust NPP members and under no conditions we will assign responsibilities to you"; (5) Cuevas should be ashamed of receiving a check for doing nothing; and (6) "the best thing for [Cuevas] to do is to resign or accept that this will be the working conditions until 2008." (Id. at 24-25.)

William Acevedo-Rivera was deemed to have admitted he told Luis A. González-Saaveda ("González-Saaveda") that (1) González-Saaveda should be ashamed of being an NPP member; (2) soon Rosselló would be in jail and those who helped him during the 2004 election have no right to work for the government; (3) it was Acevedo's duty to see that all NPP members be dismissed from the government; and (4) González-Saaveda should either resign or switch to the PDP. (Docket No. 70-5, at 5.)

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3 Francisco González was deemed to have admitted he told Rubén Morales-  
4 Vera ("Morales") that (1) he should get used to the idea that the "[PDP] are in  
5 power and that he is going to make life miserable for the [NPP]"; (2) there will  
6 "never be work for Morales at ASDA and that his choices are either get used to the  
7 idea of stealing money from the government by getting a check for doing nothing  
8 or switch to the PDP"; and (3) Morales is stealing money from the government  
9 and "'that's what republicans do.'" (Id. at 10.)

10 Rafael Billoch ("Billoch") was deemed to have admitted that (1) he told  
11 Osvaldo Muñiz-Moro ("Muñiz") that the PDP members would see that he would be  
12 transferred as many times as possible because Muñiz had a Rosselló bumper  
13 sticker on his car; (2) Billoch threatened to file complaints against Muñiz; (3)  
14 Billoch told Muñiz he should resign or get used to the idea that "they will pressure  
15 him until he resigns, or die." (Id. at 14.)

16 Eliezer Ramos-González was deemed to have admitted he told Juan José  
17 Ortiz-Santiago ("Ortiz") to remember that (1) the "[PDP] are the ones in power  
18 now, so we can do whatever we want"; and (2) "persecution is what a member  
19 of the NPP deserves because they are all crooks and crooks should not work for  
20 the government." (Id. at 18.)

21 Idalia Albery-Beltrán was deemed to have admitted she told Ortiz to  
22 remember that the "[PDP] are the ones in power now, so we can do whatever we  
23 want." (Id. at 20.)

24 Nereida Portalatín and Carmen Centerno-Rivera were deemed to have  
25 admitted they told Limarys Piñeda-Ríos she was incompetent, dumb and stupid  
26 because she was an NPP member. (Id. at 25; Docket No. 70-6, at 2.)

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3 Alberto Nolasco ("Nolasco") was deemed to have admitted that (1) Fernando  
4 Ramos-Feliciano ("Ramos") was left without any duties and responsibilities to  
5 perform; (2) the person who now uses Ramos's machine is a PDP member; (3)  
6 Nolaso told Ramos that Nolasco knew Ramos was a "political agitator"; (4)  
7 Nolasco told Ramos there was no place for Ramos at the ASDA; and (5) Nolasco  
8 told Ramos he had to understand that only PDP members could work for the  
9 ASDA. (Docket No. 70-6, at 7.)

10 William Acevedo-Rivera was deemed to have admitted he told Pedro Rosa  
11 Nuñez ("Rosa") that (1) Rosa should be ashamed of being an NPP member; (2)  
12 "all those that helped Pedro Rosselló during the 2004 election have no right to  
13 work for the government and that it is [Acevedo's] duty to see that all members  
14 of the NPP be dismissed from government"; and (3) "soon an order would be  
15 issued dismissing all those that are identified with the NPP and that if [Rosa]  
16 needs his job he should switch to PDP." (Id. at 12.)

17 Both Rafael Billoch and Nereida Bonet-Silva were deemed to have admitted  
18 they began to harass Frances Rosado-Rivera after she testified in the political  
19 discrimination case Muñiz-Acevedo v. Pérez-Cubano, No. 03-1595 (D.P.R. Nov.  
20 23, 2004), and left "admonishments" on her desk. (Id. at 17, 19.)

21 Francisco González was deemed to have admitted he told Osvaldo Rosario-  
22 Carrión ("Rosario") that (1) Rosario had to "get used to the idea that PDP  
23 members have all the power and they can do whatever they want with NPP  
24 members"; (2) there is "not going to be any work for [NPP] members at ASDA  
25 and that he better get used to that idea"; and (3) NPP members were "crooks."  
26 (Id. at 24.)

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3 Francisco González ("González") was also deemed to have admitted that (1)  
4 the person who used Daniel Serrano's ("Serrano") machine was a PDP member;  
5 (2) Serrano was left without duties and responsibilities; (3) González told Serrano  
6 to get used to the idea that the PDP members had all the power; (4) González told  
7 Serrano to get used to not doing anything because there was only work for PDP  
8 members; (5) González told Serrano that stealing from the government is what  
9 NPP members do best; and (6) González told Serrano that PDP members were the  
10 only ones who could work for the ASDA. (Docket No. 70-7, at 2.)

11 César Olivera-Linares and Antolín González were deemed to have admitted  
12 they told Daniel Serrano that (1) Serrano should "get used to not doing anything  
13 because there is only work for PDP members"; (2) "stealing money from the  
14 government is what NPP do best"; (3) "PDP members were the only ones that  
15 could work at the ASDA"; and (4) all NPP members are crooks. (Id. at 5, 7.)

16 César Olivera-Linares and Antolín González also were deemed to have  
17 admitted that the person who uses Rafael Soto-Pagán's ("Soto-Pagán") machine  
18 is a PDP member and that Soto-Pagán was left without responsibilities to perform.  
19 (Id. at 12, 14.)

20 Francisco González was deemed to have admitted he told Jorge L. Villafaña-  
21 Cruz to get used to the idea that the PDP was "in power now," the PDP is "on top,"  
22 and the PDP "has all the power now." (Id. at 19.)

23 César Olivera-Linares ("Olivera") was deemed to have admitted that (1) the  
24 person who now uses Fernando Ramos-Feliciano's ("Ramos") machine is a PDP  
25 member; (2) Ramos was left without duties or responsibilities; (3) Olivera told  
26 Ramos there was no place for him in the ASDA; (4) Olivera told Ramos he is a  
27 political agitator; (5) Olivera told Ramos to understand that only PDP members  
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3 could work for the ASDA; and (6) every time Ramos complained to Olivera about  
4 his working conditions, Olivera would answer that "under no conditions" would  
5 Ramos be assigned responsibilities. (*Id.* at 23.)

6 On October 11, 2007, the defendants filed a motion for reconsideration,  
7 arguing they never received plaintiffs' requests for admissions and only became  
8 aware of them the date plaintiffs filed their motion for summary judgment.  
9 (Docket No. 71, at 2-3.) The defendants' motion for reconsideration was  
10 summarily denied; the defendants had been put on notice that plaintiffs expected  
11 an answer to their requests for admissions at least four times during the litigation.  
12 (Docket No. 74; Docket No. 78, at 6.)

13 On October 15, 2007, defendants filed a motion opposing plaintiffs' motion  
14 for summary judgment. (Docket No. 76.) There the defendants set forth the  
15 same argument they presented in their motion for reconsideration; that the facts  
16 deemed admitted against the defendants could not be used against them in  
17 summary judgment because defendants never received the requests for  
18 admissions. (*Id.* at 3.)

19 On October 31, 2007, I granted summary judgment on plaintiffs' claims of  
20 politically motivated adverse employment actions and denied the defendants'  
21 motion in opposition to summary judgment. (Docket No. 78.) After setting out  
22 the standard for summary judgment and the requisite burden-shifting analysis,  
23 I specifically found that the defendants' motion failed because they simply  
24 rehashed the arguments from their October 3, 2007 motion for reconsideration,  
25 and promulgated neither evidence nor argument to show they would have taken  
26 the same actions regardless of the plaintiffs' political beliefs. (*Id.* at 9-10.)

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3 On November 13, 2007, the defendants filed a motion for reconsideration  
4 arguing that summary judgment was improper because (1) only five of the  
5 seventeen plaintiffs' complaints of adverse employment actions; those of Daniel  
6 Serrano, Jaime Alicea-Acevedo, Jesús A. Cuevas-Pérez, Fernando Ramos-  
7 Feliciano, and Rafael Soto-Pagán, against five of the defendants; Francisco  
8 González, Roberto Soto, César Olivera-Linares, Alberto Nolasco and Antolín  
9 González, were supported by defendants' admissions; (2) defendants were not  
10 given the opportunity to establish nondiscriminatory reasons for the challenged  
11 employment action; and (3) none of the defendants had the authority to grant the  
12 plaintiffs the promotions and salaries they sought. (Docket No. 79, at 4-6.)  
13 Additionally, defendants argue Luis Rivero-Cubano was never served with process,  
14 had no admissions deemed against him and has no allegations against him in the  
15 complaint. (*Id.* at 6.) On November 26, 2007, plaintiffs filed a response in  
16 opposition to defendants' motion for reconsideration. (Docket No. 80.)

## 17 II. MOTION FOR RECONSIDERATION STANDARD

18 A motion for reconsideration filed within ten days of the judgment for which  
19 it seeks reconsideration is effectively a motion to alter or amend a judgment  
20 under Federal Rule of Civil Procedure 59(e). Global Naps, Inc. v. Verizon New  
21 England, Inc., 489 F.3d 13, 25 (1st Cir. 2007) (quoting Aybar v. Crispín-Reyes,  
22 118 F.3d 10, 16 (1st Cir. 1997)). A movant must show that the court  
23 "misapprehended some material fact or point of law" or "that newly discovered  
24 evidence (not previously available) has come to light. . . ." Palmer v. Champion  
25 Mortgage, 465 F.3d 24, 30 (1st Cir. 2006). Not only is a motion for  
26 reconsideration not a proper vehicle to relitigate or rehash matters already  
27 decided by the court, Villanueva-Méndez v. Nieves-Vázquez, 360 F. Supp. 2d  
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320, 322 (D.P.R. 2005), but a party is not entitled to present new arguments on  
 4 a motion for reconsideration, Iverson v. City of Boston, 452 F.3d 94, 104 (1st Cir.  
 5 2006) (citing Aybar v. Crispin-Reyes, 118 F.3d at 16). “[M]otions for  
 6 reconsideration should be granted **sparingly** because parties should not be free  
 7 to relitigate issues a court has already decided.” Villanueva-Mendez v. Nieves-  
 8 Vázquez, 360 F. Supp. 2d at 324 (emphasis in original). “[M]otions for  
 9 reconsideration run counter to the operation of the Federal Rules of Civil  
 10 Procedure, which provide all the necessary safeguards to promote fair decisions.”  
 11 Id. at 323.

### 12 III. DISCUSSION

13 Up to this point, the theme of this case was that defendants erred in not  
 14 responding to plaintiffs' requests for admissions and thereby admitted by default  
 15 several critical facts necessary to plaintiffs' case. The new theme is that  
 16 defendants erred in not using their opposition to plaintiffs' motion for summary  
 17 judgment to properly controvert plaintiffs' arguments. We take the defendants'  
 18 allegations in reverse order.

#### 19 A. Adverse Employment Actions and Not Terminations

20 As a preliminary matter, defendants are correct in noting that the plaintiffs  
 21 were at no point terminated and at no point alleged they were constructively  
 22 discharged. The use of the word “termination” and any implication there were any  
 23 forced resignations was an error in the October 31, 2007, Opinion and Order.  
 24 Nevertheless, the mistake was harmless as both termination and constructive  
 25 discharge are subject to the same test as any other adverse employment action  
 26 under 42 U.S.C. § 1983. See Aguiar-Carrasquillo v. Agosto-Alicea, 445 F.3d 19  
 27 (1st Cir. 2006).

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## B. Claims Against Defendant Rivero

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Defendants argue summary judgment against defendant Luis Rivero-Cubano (hereinafter "Rivero") was improper because: (1) this court had no jurisdiction over Rivero, (2) there were no allegations against Rivero; and (3) there were no requests for admissions deemed admitted by default against Rivero. None of these arguments grant defendant Rivero any relief.

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First, defendants argue this court has no jurisdiction over Rivero because he was never served with process. I disagree: defendant Rivero waived this defense because it was not presented in answer or any of his pre-answer motions.

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The Federal Rules of Civil Procedure provide that:

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Every defense, in law or fact, to a claim for relief in any pleading, . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . insufficiency of service of process. . . . A motion making any of these defenses shall be made **before** pleading if a further pleading is permitted.

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Fed. R. Civ. P. 12(b)(5) (emphasis added). "A defense of lack of jurisdiction over the person, . . . or insufficiency of service of process is waived . . . if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof. . . ." Fed. R. Civ. P. 12(h). In case there is any confusion, the notes to the 1966 amendment make clear that "certain specified defenses which were available to a party when he made a preanswer motion, but which he omitted from the motion, are waived. The specified defenses are [among others] . . . insufficiency of service of process (see Rule 12(b)(2)-5) ." Fed. R. Civ. P. 12 advisory committee's note.

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Rivero's answer to the complaint sets forth no such defense. The only motion Rivero arguably made before his answer to the complaint was the motion

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to reschedule the initial scheduling conference and no such defenses were set forth in that motion. Therefore, Rivero's argument that he was never served with process is considered waived.

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Second, defendants contend there were no allegations against Rivero. However, the complaint plainly alleges, among other things, that "[d]efendants have retained new employees to perform many of the duties that were previously performed by the plaintiffs and/or have assigned those duties to employees identified with the Popular Democratic Party." Luis Rivero-Cubano is one of those defendants. Therefore, defendants' contention that Rivero has no allegations against him is incorrect.

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Third, defendants argue there were no admissions against Rivero. While this is true, no admissions need be deemed against Rivero because, as the Secretary of the Department of Agriculture (hereinafter "Secretary"), he is merely the nominal authority to which an injunction must be directed. In any event, even if this fact was of any significance, this would be the first time any argument based upon that fact was propounded by the defendants, and as such cannot be considered on a motion for reconsideration.

### C. Defendants' Authority to Grant Plaintiffs Relief

Defendants' clarification that plaintiffs' requests for admissions were not filed before this court must be dispelled: the requests for admissions which the defendants were deemed to have admitted by default were filed with plaintiffs' motion for summary judgment.

Defendants argue that none of them have the authority to grant plaintiffs the promotions and salary raises they sought and so there was no causal relationship between the defendants and the deprivation of the plaintiffs' federal

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3 rights. This is the first time defendants have proposed this argument.  
4 Additionally, defendants provide no evidence to corroborate their allegation.  
5 Because new arguments may not be considered in a motion for reconsideration,  
6 and, in any event, new evidence may not be considered, this argument cannot be  
7 given any merit.

8 In their answer to the complaint, the defendants did alleged: "[t]here is no  
9 causal relationship between any action or omission by the Defendants and the  
10 damages claimed in the complaint." However, that statement was much broader  
11 than defendants' contention in this motion for reconsideration, which sought to  
12 explain, finally, **why** there was no causal relationship between defendants acts or  
13 omissions and plaintiffs' complaint.

14 Defendants' motion in opposition to summary judgment would have been  
15 an outstanding vehicle for this argument. Instead, defendants used their motion  
16 in opposition to summary judgment to rehash the arguments that failed them in  
17 their October 11, 2007, motion for reconsideration. In their motion in opposition  
18 to summary judgment, defendants gave no explanation as to how or why it is  
19 defendants had no causal relationship to the adverse employment actions.  
20 Therefore, because defendants argue they did not have the ability to grant the  
21 relief the plaintiffs sought for the first time in this motion for reconsideration, and  
22 because new arguments may not be considered on motion for reconsideration,  
23 this argument may not be considered.

24 D. Burden-Shifting Under Summary Judgment

25 Defendants argue that summary judgment was improper because it was  
26 based solely on the plaintiffs' *prima facie* case and defendants were not afforded  
27 an opportunity to establish nondiscriminatory reasons for the challenged job  
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actions under the McDonnell burden shifting framework. This argument is patently contradictory to what are the plain facts. The defendants were afforded a chance to present legitimate reasons for the adverse employment actions in their opposition to plaintiffs' motion for summary judgment. Instead, as previously noted, defendants chose to use their motion to oppose summary judgment as a platform to rehash the arguments that failed them in their October 11, 2007, motion for reconsideration. Therefore, this argument is without merit.

#### E. Support of Plaintiffs' Claims by Admissions

Defendants argue that only five of the seventeen plaintiffs' claims of adverse employment actions against five of the sixteen defendants are supported by the admissions made by the defendants. The rest of the admissions, allege the defendants, at best support claims for hostile work environment based on political discrimination. While this allegation is not **fully** supported by the facts, it is not without merit: it is arguable that five of defendants' admissions deemed admitted by default do not support three of the plaintiffs' claims of adverse employment actions based on political discrimination.

To prevail on a claim of political discrimination under 42 U.S.C. § 1983, "a plaintiff must show that party affiliation was a substantial and motivating factor behind [an adverse] employment action." Marrero-Gutiérrez v. Molina, 491 F.3d 1, 9 (1st Cir. 2007). To meet this burden, plaintiffs may present evidence of verbal statements of political or personal animus. Peguero-Moronta v. Santiago, 464 F.3d 29, 45-46 (1st Cir. 2006) (citing Rodríguez-Marín v. Rivera-González, 438 F.3d 72, 76 (1st Cir. 2006)) (witness testified defendants made statements to her indicating her demotion was politically motivated). Plaintiffs may also meet

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 3 this burden by showing that the defendants were members of the adverse party  
 4 and that the plaintiffs' duties were reassigned to supporters of the party in power.  
 5 Peguero-Moronta v. Santiago, 464 F.3d at 46 (citing Acosta-Orozco v. Rodriguez-  
 6 de-Rivera, 132 F.3d 97, 101 (1st Cir. 1997)). Plaintiffs cannot "[m]erely  
 7 juxtapos[e] a protected characteristic-someone else's politics-with the fact that  
 8 the plaintiff was treated unfairly." Peguero-Moronta v. Santiago, 464 F.3d at 45  
 9 (quoting Padilla-García v. Guillermo Rodríguez, 212 F.3d 69, 74 (1st Cir. 2000)).

10 All of the defendants are PDP members and all of them knew the plaintiffs  
 11 were NPP members. Roberto Soto told Jaime Alicea-Acevedo "[w]e know that you  
 12 are an active member of the [NPP] and I will personally see that you are forced  
 13 to resign." Rafael Billoch told Osvaldo Muñiz-Moro that because he had a Rosselló  
 14 bumper sticker they would see that he was transferred as often as possible, and  
 15 that "they will put pressure on [Muñiz] until he resigns." Eliezer Ramos-González  
 16 told Juan José Ortiz-Santiago that the "[PDP] are the ones in power now, so we  
 17 can do whatever we want and persecution is what a member of the NPP deserves  
 18 because they are all crooks and crooks should not work for the government."

19 Segundo Soto-Cruz told Juan Avilés-Acevedo that Avilés' loyalty to the NPP  
 20 would never get Avilés transferred to the Moca office, a position Avilés desired.  
 21 Segundo Soto told Raúl Cardona-Salcedo it would be in his best interest to resign  
 22 or Segundo Soto would make it hell for him based on his political affiliation.

23 Alberto Nolasco told Fernando Ramos-Feliciano there was no place for him  
 24 at the ASDA and that only PDP members could work for the ASDA. Alberto  
 25 Nolasco admitted that Fernando Ramos-Feliciano's machine was now being  
 26 operated by a PDP member.

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William Acevedo-Rivera told Luis González-Saavedra it was Acevedo's duty to make sure all NPP members were dismissed from the government and González should resign or switch to the PDP. William Acevedo-Rivera told Pedro Rosa-Nuñez that "if he needs his job he should switch to PDP."

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César Olivera-Linares told Migdalia Cordero-Ramos that it would be in her best interest to resign or they would make her working conditions a living hell and that "not even Rosselló would be able to help her." César Olivera-Linares told Jesús A. Cuevas-Pérez that "[w]e don't trust NPP members," that under no conditions was Cuevas to be assigned duties or responsibilities, and that "the best thing for [Cuevas] to do was resign or accept that this will be the working conditions until 2008." César Olivera-Linares told Fernando Ramos-Feliciano there was no place for him in the ASDA, that only PDP members could work for the ASDA, and that under no conditions would Ramos-Feliciano be assigned any responsibilities. César Olivera-Linares admitted that Fernando Ramos-Feliciano's machine is now being operated by a PDP member.

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César Olivera-Linares and Antolín González both admitted Rafael Soto-Pagán's machine is now being operated by a PDP member.

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Francisco González told Rubén Morales-Vera there will "never be work for him at ASDA" and that he could either get "a check for doing nothing or switch to the PDP." Francisco González told Osvaldo Rosario-Carrión that there is "not going to be any work for [NPP] members at ASDA and that he better get used to the idea."

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Francisco González, César Olivera-Linares and Antolín González told Daniel Serrano to get used to doing nothing because there was only work for PDP

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members. Francisco González admitted Daniel Serrano's machine was now being  
4 operated by a PDP member.

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Therefore, Jaime Alicea-Acevedo, Juan Avilés-Acevedo, Raúl Cardona  
6 Salcedo, Migdalia Cordero-Ramos, Jesús A. Cuevas-Pérez, Luis A. González-  
7 Saaveda, Rubén Morales-Vera, Osvaldo Muñiz-Moro, Juan José Ortiz-Santiago,  
8 Fernando Ramos-Feliciano, Pedro Rosa-Nuñez, Osvaldo Rosario-Carrión, Daniel  
9 Serrano, and Rafael Soto-Pagán have established that the adverse employment  
10 actions against them were politically motivated. Since defendants took no pains  
11 to present evidence that the adverse employment actions were for non-political  
12 reasons, these plaintiffs have succeeded in their 42 U.S.C. § 1983 actions.

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Summary judgment should have been denied on the claims of politically  
14 motivated adverse employment actions of Limarys Piñeda-Ríos, Frances Rosado-  
15 Rivera, and Jorge Villafaña-Cruz. Nereida Portalatín and Carmen Centerno told  
16 Limarys Piñeda-Ríos that because she was an NPP member she was incompetent,  
17 dumb and stupid. Rafael Billoch and Nereida Bonet-Silva began harassing Frances  
18 Rosado-Rivera after she testified in the political discrimination case Muñiz Acevedo  
19 v. Pérez Cubano, No. 03-1595 (D.P.R. Nov. 23, 2004). Francisco González told  
20 Jorge L. Villafaña that he had to get used to the idea that the PDP is in power now,  
21 the PDP is "on top," and the PDP "has all the power now."

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Although these defendants' statements and actions against those plaintiffs  
23 are politically charged, they do not establish that the adverse employment actions  
24 against those plaintiffs were politically motivated. Therefore, the summary  
25 judgment on those claims is reconsidered and denied.

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3 IV. CONCLUSION

4 In the view of the above I find that most of defendants' arguments are  
5 without merit or may not be considered on motion for reconsideration. However,  
6 summary judgment on plaintiffs Limarys Piñeda-Ríos, Frances Rosado-Rivera, and  
7 Jorge L. Villafañe-Cruz' claims of adverse employment actions are reconsidered  
8 and denied. Therefore, defendants' motion for reconsideration is GRANTED in part  
9 and DENIED in part.

10 The scheduled jury trial will be limited to the issue of damages suffered by  
11 the plaintiffs as to whom summary judgment was granted. That jury trial will not  
12 entertain the legitimacy of the facts deemed admitted by defendants due to their  
13 failure to respond to plaintiffs' requests for admissions. A second jury trial will be  
14 scheduled for the claims of Limarys Piñeda-Ríos, Frances Rosado-Rivera and  
15 Jorge L. Villafañe-Cruz.

16 At San Juan, Puerto Rico, this 10th day of January, 2008.

17 S/ JUSTO ARENAS  
18 Chief United States Magistrate Judge

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